



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Mr. B.J. Smith
City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR95-767

Dear Mr. Smith:

On June 5, 1995, we received your request for an open records decision under the Open Records Act, chapter 552 of the Government Code with regard to certain plat, drainage, and development records requested by Mr. Robert B. Baldwin. Your request was assigned ID# 34080. You assert that the requested information is excepted from required public disclosure under section 552.103.

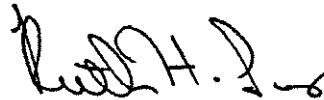
The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *But see, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On June 12, 1995, we asked you for copies of the information at issue. To date we have not received your reply.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exception you raised under section 552.021(a). Consequently, we find that you have not met your burden under sections 552.301-.303 of the Government Code and that the information is presumed to be public. *See* Open Records Decision No. 195 (1977).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/RWP/rho

Ref.: ID# 34080

cc: Mr. Robert B. Baldwin
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